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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,680	02/18/2004	Patrick Ladd	TWAR.005A	5211
7590 GAZDZINSKI & ASSOCIATES Suite 375 11440 West Bernardo Court San Diego, CA 92127			EXAMINER PHAN, TUANKHANH D	
			ART UNIT 2163	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/782,680

Applicant(s)

LADD ET AL.

Examiner

Tuan-Khanh Phan

Art Unit

2163

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 21 June 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-24, 34-61, 65 and 67-72 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-24, 34-61, 65 and 67-72 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB06)
Paper No(s)/Mail Date 6/21/2010
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ ~~Notes of Informal Patent Application~~
- 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

The reference listed in the IDS filed 6/21/2010 has been considered. A copy of the signed or initialed IDS is hereby attached.

Response to Amendment

This Office Action is in response to the Amendment, filed on 3/12/2010. Claims 12-24, 34-61, 65, 67-72 are pending.

Response to Arguments

Applicant's arguments filed 6/18/2009 have been fully considered but they are not persuasive.

Issue: Applicant's amendments, "via a server entity of the first node," to claims 12 and 50 in an attempt to establish a particular machine or apparatus as the server entity.

Response: The examiner respectfully points out that a server entity and its components are merely software per se. Thus, claims 12-20 and 50-54 stand rejected under 35 U.S.C. 101 as failing to meet requirements of process claims in light of *In re Bilski*. Rejection of claims 21-23, 35-36 and 55-56 under 35 U.S.C. 101 has been withdrawn.

Issue: Applicant argues that Curran is in no way concerned with the playback of the content delivered to the devices. Hence, even if Patki discloses enabling a user to control functions of the playback of content (a point which Applicant does not necessarily concede), and there is simply no suggestion of the desirability of controlling the playback in the Curran reference. Accordingly, there is nothing in the prior art to

suggest the desirability, and thus the obviousness, of making the combination of Curran and Patki.

Response: The examiner respectfully disagrees with the applicant and asserts that Curran allows a user to download and access multimedia stream files in a distributed multimedia environment having applications able to carry out such functionality (p. 947, 2nd column). In addition, the Applicant fails to take in the consideration of one of ordinary skill in the art that when alleged being able to access and receiving media files without a motivation to play/playback with files. Thus, the motivation to play/playback a multimedia file is apparent and valid.

Issue: Applicant argues that cited references fail to teach or suggest (i) the components being selected from among a plurality of sets of components provided to the CPE, (ii) the sets of components each being specific to a different protocol, and/or (iii) the CPE assembling the components into an application having an appropriate protocol via an editor application. The Chameleon system merely defines an application configuration only for a specific network protocol. That is to say, even if the CPE in Curran were capable of assembling an application given various components, there is simply no teaching or suggestion in Curran of the CPE doing so from among a plurality of sets of components each being specific to a different protocol, in order to assemble an application having an appropriate protocol; It's the same argument for "enabling the assembly of an application specific to a particular MSO network given a plurality of components which are associated to several different MSO networks."

Response: The examiner respectfully disagrees with the applicant and asserts

that while the applicant seems to agree that there are various component and protocols in Chameleon disclosed by Curran, the applicant disagrees the purpose of Chameleon to match the characteristics of different network environment, therefore, different and specific protocols (p. 950, 1st para).

Issue: Applicant argues that cited references fail to teach or suggest specifying to said CPE a channel on which on-demand content may be accessed by said CPE.

Response: The examiner respectfully disagrees with the applicant and asserts that QoS (Quality of Services) of Curran enables to provide service to only channel that the user's device is subscribed to known at the Primary Quality Transformation (PQT) (p. 949, column 1).

Claim Objections

Claims 1-20 are objected because much patentable weight is not given to the functions. Claim 1 recites "configured to" to perform a function are not positive limitations but only require the ability to so perform. Claim scope is not limited by claim language that suggests or makes optional but does not require steps to be performed, or by claim language that does not limit a claim to a particular structure. Since they are not positively recited, the claims do not constitute a limitation in any patentable sense. Claims 2-20 are also objected for being dependents of the objected claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-21, 34-46, 50-61 and 67-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over anticipated by Kevin Curran (The Use of Dynamically Reconfigurable Protocol Stacks for Streaming Multimedia to Mobile Devices; 2002 IEEE), in view of Patki et al. (US Pat. 6,944,185), hereinafter Patki.

Regarding claims 12, 21, 34, 37, 46, 50-51, 61 and 71, Curran discloses a method of developing the specific protocol useful for delivery of content from a first node of a network to a second node thereof via a server entity of said first node, the method comprising (Figure 2; from a first node client to a second node Multimedia Server):

developing a first component adapted to communicate between said first and second nodes (i.e. Chameleon Middleware allows communication between first and second entities; Figure 2);

developing a second component adapted to process the content delivered to said second node; and developing a third component adapted to cooperate with at least one of said first and second components to control functions specific to said protocol (p. 949, 2nd ¶; the application allows data to be retrieved and processed such as audio or video file composition and the sending and receiving ends);

assembling said first, second and third components into one or more applications configured to utilize said components (p. 948, 3rd para, disclosing a multiple of protocol modules configured altogether to run a protocol and support multimedia applications);
and

providing said one or more applications to said second node via at least one multiplex transport stream wherein said one or more applications are subsequently downloaded to one or more CPE configured to launch said one or more applications, thereby enabling one or more second applications within said CPE to make use of individual ones of said first, second and third components (abstract; multiplex streaming from one device to another device via wireless [such as cell-phone] and wire-network is inherent; in order for a user to be able to receive data from a central location, it's necessary to download the appropriate application or layers with the help of Java serialization framework to ensure that all protocol function accordingly on the user's device).

While it is well known in the art that a device of Curran's disclosure could enable a user to control the playback function of content, Patki discloses a user control function of playback of said content.(col. 5, lines 60-64;). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate Patki's disclosure into Curran's disclosure for the motivation of decoding media frames and providing playback appropriately.

Regarding claims 13, 38, and 65, Curran and in view of Patki disclose the method of Claim 12, Curran further discloses wherein said cooperation with at least one of said first and second components comprises accessing said first component to cause at least one message to be sent between said second node and said first node, said at least one message causing at least one corresponding function to be executed (the

communication between a client and a multimedia server is taken at least via the session manager; Figure 2).

Regarding claims 14, 39, and 66, Curran and in view of Patki discloses the method of Claim 12, Curran further discloses wherein said act of developing said first component comprises developing a Java DataSource (the framework of Java 2 Micro Edition can support Java DataSource, p. 947, 2nd column, lines 28-30).

Regarding claims 17 and 42, Curran and in view of Patki disclose the method of Claim 14, Curran further discloses wherein said act of developing a first component comprises developing a DataSource component further adapted to setup a session and handshake or negotiate conditional access parameters (setup a session and handshake are part of the session manager when request for data is being made by a client to a server; Figure 2).

Regarding claims 18 and 43, Curran and in view of Patki disclose the method of Claim 14, Curran further discloses wherein said act of developing a first component comprises developing a DataSource component further adapted to specify the channel on which said content will be delivered (disseminating of media from a source to multiple destination in an oriented way is shown; p. 948 the Chameleon framework).

Regarding claims 19, 44 and 68, Curran and in view of Patki disclose the method of Claim 12, Curran further discloses wherein said act of developing a first component comprises adapting said first component to provide messaging in support of a plurality of functional modes in cooperation with said third component, said third component being adapted to provide said plurality of functional modes (a plurality of functional

modes with a flexible protocol system allows the "dynamic selection, configuration of protocol modules to adapt to changing service properties", p. 948, 2nd column, 1st ¶).

Regarding claims 20, 45 and 69, Curran and in view of Patki disclose the method of Claim 12, Curran further discloses wherein said act of developing a second component further comprises developing a player component adapted for implementing said second component (it is inherent that a mobile device includes a media player).

Regarding claim 35, Curran and in view of Patki disclose the CPE of Claim 21, Curran further discloses wherein said CPE is further adapted to: receive said at least one application (Figure 2);

store said at least one application within a storage device of said CPE (Figure 2);
and

run said application to configure said CPE according to a network-specific protocol implemented by said at least one application (Figure 2).

Regarding claim 36, Curran discloses the CPE of Claim 21, wherein said at least one application comprises an application configured with a network-specific protocol extension and wherein said CPE is further adapted to selectively allow a plurality of applications resident on said CPE to access said extension (i.e. a flexible protocol system allows the "dynamic selection, configuration of protocol modules to adapt to changing service properties", p. 948, 2nd column, 1st ¶).

Regarding claim 54, see the discussion of claim 36.

Regarding claims 15 and 40, while Java framework of Curran could support a Java handler, Curran does not explicitly disclose the method of Claim 14, wherein said

act of developing said second component comprises developing a Java MediaHandler. However, in the same field of processing data, Patki discloses Java Media Manager and Handler (Figure 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate Java Media Handler of Patki into processing data of Curran to support a wider range of data processing and type.

Regarding claims 16, 41 and 67, Curran and in view of Patki disclose the method of Claim 15, Curran further discloses wherein said act of developing said third component comprises developing a controller adapted to access said first component to cause at least one message to be sent between said second node and said first node, said at least one message causing at least one corresponding function to be executed (p. 948, last 7 lines; exhibiting communication protocol control for execution).

Regarding claims 55-56, see the discussion of claim 13.

Regarding claims 56-60, see the discussions of claims 14-16 and 20, respectively, for the same reasons of rejections.

Regarding claim 72m Curran and in view of Patki disclose the storage apparatus of claim 71, wherein said second node comprises a CPE, and said node comprises an on-demand server (p. 949. col. 1).

Claims 22-24 and 47-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Curran in view of Patki, and in further view of Logston et al. (US. Pat. 6,941,341), hereinafter Logston.

Regarding claims 22 and 47, Curran and in view of Patki disclose the CPE of Claim 21 with java-base middleware, but do not explicitly disclose CPE comprises a

DSTB with Java-based middleware, and at least one of said first, second and third components of said at least one software application comprises at least one class and at least one interface disposed within the application directory hierarchy. However, in the same field of endeavor, Logston discloses CPE comprises a DSTB (col. 9, lines 40-45) with Java-based middleware, and at least one of said first, second and third components of said at least one software application comprises at least one class and at least one interface disposed within the application directory hierarchy (Figure 18; server hierarchy). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate disclosures by Logston into Curran with a motivation of able to analyze and determine channel availability and states of each channel in according with active/inactive clients' set-top boxes.

Regarding claims 23 and 48, Logston further discloses the CPE of Claim 22, wherein said CPE is adapted to: receive said at least one application over said network; and subsequent to said receipt, launch said at least one application to configure at least one path to said at least one component (Figure 10; communication path).

Regarding claims 24 and 49, the CPE of Claim 23, Logston discloses wherein said CPE further comprises a plurality of applications, said plurality of other applications being enabled to access said at least one component via at least one of said at least one configured paths (col. 16, lines 45-53).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan-Khanh Phan whose telephone number is (571)270-3047. The examiner can normally be reached on 4/5/9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don Wong can be reached on 571-272-1834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/TKP/

/Hung T Vy/

Primary Examiner, Art Unit 2163